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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,805	09/24/2003	Maurice Valen	IMP-102	4324
69597 7590 03/14/2008 MAXINE BARASCH & ASSOCIATES, PLLC 18 CORPORATE WOODS BOULEVARD ALBANY, NY 12211				
EXAMINER				
BASHAW, HEIDI M				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
03/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/668,805

Applicant(s)

VALEN, MAURICE

Examiner

HEIDI M. BASHAW

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This non final action is in response to an after final amendment filed on February 19, 2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar 6,364,662 in view of Ashman 6,325,627.
4. Re claim 29, Kumar teaches a single one-piece multifunctional rotary tool bit 10 for a drilling and cutting system adapted for preparing an osteotomy in a bone with an osteotomy locator tip 38 and a redirectable tip formed at the distal end of said cutting and drilling blade 24 to locate an osseous implant site and prevent wandering and slipping of said tip, the cutting and drilling blade 24 has multifaceted cutting edges 34 for creating a crestal bone height reducer which removes bony particulate material (col. 3, ll. 29-31), the proximal end of said cutting and drilling blade 24 comprises a tapered countersink (tapers from where reference 26 ends to where reference #44 begins as shown in Figure 3). Kumar also discloses the last portion of the proximal end of said cutting and drilling blade immediately after said tapered countersink further comprises a gross osseous crestal bone height reducer 44. The tool bit 10 further comprises an osteocompressor (inherently the bone is compressed by the tool bit) operatively

connected to said gross osseous crestal bone height reducer 44. The apparatus taught by Kumar, as illustrated in fig. 3, teaches each structural limitation claimed by the applicant. Kumar does not specifically teach each of the different structures functioning as claimed by the applicant, however, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the device as claimed since the method of use is obvious from the structure.

5. Kumar does not teach using a synthetic bone graft material mixed with the bony particulate material to reconstruct bone structures.
6. Ashman teaches a synthetic bone graft material mixed with the bony particulate material to reconstruct bone structures (col. 3, ll. 41-56).
7. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kumar in view of Ashman in order to promote faster and more effective growth of bone as taught by Ashman (col. 3, ll. 54-56).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. BASHAW whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heidi Bashaw
Examiner
Art Unit 3732

/John J Wilson/
Primary Examiner
Art Unit 3732